Why, indeed, should there by any distinction made between the operation of a railway at and between stations and the operation of such facilities as terminal yards, whether properly located or not? Statutes conferring the power of eminent domain upon public service corporations were designed primarily for the welfare of the public, but they are in derogation of the common law and should be strictly construed. The mistake of looking solely to the convenience of the general public is obvious, and if, by the operation of the road or its facilities, land value is diminished, the owner should be allowed, especially under the newly adopted constitutional amendments, to recover the difference in value immediately before and immediately after the construction and operation of the road or its facilities as the case may be.[11]

CIVIL STATUS OF CONVICTS.—At early common law, a person convicted and sentenced for treason or other felony was placed, by operation of law, in a state of attainder.[1] Three important incidents were consequent upon such attainder: first, forfeiture, whereby all the felon's property, both real and personal, was forfeited to the Crown; second, corruption of blood, whereby the attainted person lost the capacity to inherit and the power to transmit his estate to his heirs; and third, the incident commonly termed civil death, which consisted in a substantially complete extinction of the felon's civil rights.[2] In England, this barbarous doctrine of attainder, forfeiture, and corruption of blood, has now been entirely abolished by statute, with the single exception of forfeiture consequent upon outlawry, and provision is made for the administration by trustees of the convict's estate, for the benefit of his creditors and the support of his family.[3]

These forfeitures and disabilities which the ancient common law imposed upon convicted felons have never, in their entirety, attained legal recognition in this country, principally because they are out of harmony with the spirit of our fundamental laws and system of gov-

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fails utterly to consider that the plaintiff might have been damaged irrespective of the amount of care used by the defendant. In Taylor *v.* Seaboard Air Line Ry. (1907) 145 N. C. 400, the court seems unduly influenced by the fact that the railroads are "our great arteries of commerce", and rules the complaint to be insufficient in law on the ground that it failed to allege that the railway needlessly did the act complained of. In Romer *v.* St. Paul City Ry. (1899) 75 Minn. 211, it was ruled that there was in fact no nuisance; it is submitted that on the facts this finding was obviously incorrect. See Wylie *v.* Elwood, *supra.*

[11]See the dissenting opinion in Austin *v.* Augusta Terminal Ry. Co., *supra;* Chicago R. I. & P. Ry. *v.* O'Neill (1899) 58 Neb. 239; Omaha & N. P. R. R. *v.* Janecek (1890) 30 Neb. 276; Louisville S. R. R. *v.* Hooe (1898) 20 Ky. L. 849.

[1]Co. Lit. 130a, 133a; 1 Bl., Comm. *132, *133; 4 Bl., Comm. *336, *380.

[2]1 Chitty, Criminal Law, *723 *et seq.;* 2 Bl., Comm. *251, *252; 4 Broom & H., Comm. 487 *et seq.;* Co. Lit. 130a; see Bannyster *v.* Trussel (1597) Cro. Eliz. 516.

[3]Act, 33 & 34 Vict., c. 23. This statute supplements Act, 54 Geo. III, c. 45, under which forfeiture of lands and corruption of blood was abolished in every case of felony, except treason, petit treason and murder.

ernment.[4] Some elements, however, of this now extinct doctrine, were introduced into our early jurisprudence, and traces thereof are still discernible in the body of our laws. For example, the federal Constitution provides that Congress shall have power to declare the punishment of treason, but that no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.[5] It is manifest, therefore, that while true attainder is expressly forbidden, the life estate of a person convicted of treason may be subjected to seizure, condemnation and sale.[6] Similar provisions are to be found in various State constitutions, although in some the punishment of forfeiture has been completely done away with.[7] It is thus apparent that the common law theories in this regard never gained much foothold here, and that a conviction for felony in the United States is followed by no consequences except such as are prescribed by statute.[8]

At the present day, when a man is convicted of a felony, he is deprived by law not only of his liberty and the benefits of his own labor, but also of certain political and civil rights, which, in the opinion of the legislature, he is no longer fit to exercise.[9] The suspension of these rights commences usually when sentence is pronounced,[10] and continues during the term of the felon's imprisonment under the sentence.[11] Where the statutes enumerate separately the disabilities which are to accompany conviction, no special difficulty has been experienced in their interpretation and application. But in a number of States, statutes have been enacted declaring simply that, under certain circumstances, a convict shall be deemed "civilly dead" or "deprived of all civil rights,"[12] and considerable confusion has arisen in the attempts of the courts to ascertain the exact meaning and effect of such provisions, particularly with respect to the property rights of the offender. On one point, at least, there seems no dispute, namely, that civil death does not correspond in legal contemplation to a natural death, so that an imprisonment for life does not operate a

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[4]U. S. Const., Art. 1, § 9—"No bill of attainder * * * shall be passed." See, also, dissenting opinion of Mason, J., in Green *v.* Shumway (1868) 39 N. Y. 418, 430.

[5]U. S. Const., Art. 3, § 3.

[6]Confiscation Act of July 17, 1862, 12 U. S. Stat. at L. 589. See Bigelow *v.* Forrest (1869) 9 Wall. 339.

[7]See 2 Kent, Comm. (6th ed.) *386.

[8]See *In re* Nerac's Estate (1868) 35 Cal. 392; Kenyon *v.* Saunders (1894) 18 R. I. 590.

[9]*E. g.*, the right of suffrage, the right to hold public office, the right to testify, the right to act as administrator or executor, etc.

[10]See Miller *v.* Finkel (N. Y. 1853) 1 Park. Crim. Rep. 374; but see Harmon *v.* Bowers (1908) 78 Kan. 135. Where sentence is suspended, it is held that the offender does not lose his right to vote. People *v.* Fabian (1908) 192 N. Y. 443; State *v.* Houston (1889) 103 N. C. 383.

[11]A pardon seems to terminate disabilities. *In re* Deming (N. Y. 1813) 10 Johns. 232.

[12]See New *v.* Smith (1906) 73 Kan. 174; Gray *v.* Gray (1904) 104 Mo. App. 520; *In re* Donnelly's Estate (1899) 125 Cal. 417.

devolution of the convict's property to his heirs.[13] Most of the jurisdictions where the principle of *civiliter mortuus* is applied, provide, therefore, by statute, for the administration of the felon's estate and the safeguarding of his interests by trustees.[14] The recent case of *Byers* v. *Sun Savings Bank* (Okla. 1914) 139 Pac. 948, arose, however, under an act which suspended all civil rights of a person sentenced to a term in the penitentiary, but failed to provide for the appointment of trustees to administer his estate; it was held that the felon had power, while under confinement, to make contracts enforcible against his estate and dispose of his property for the purpose of employing counsel. This decision, which was based on the ground that a total divesting of the convict's capacity to contract and to convey his property would nullify the inherent right to sue for a writ of habeas corpus, or to petition for a pardon or parole, seems just and in consonance with the reason of the law.[15] It follows, moreover, the trend of modern judicial opinion, which is inclined to allow a convict to retain all his civil rights save those taken from him expressly or by necessary implication of law.[16]

PRIVILEGE IN PUBLICATION OF PLEADINGS.—Since all criminal and most civil actions involve some detriment to reputation, it is important to note the degree to which courts will protect newspaper accounts of judicial proceedings. The doctrine of privilege, formerly based by some upon the narrow principle that since courts were open to all, there could be no harm in reporting their proceedings to all,[1] really rests upon the proposition that upon many occasions the private rights of individuals must be subordinated to paramount needs of society.[2] Accordingly, when statements and documents before a legal tribunal are properly pertinent to the issue, subjection of their authors to civil responsibility would tend to impair the freedom of the inquiry and the administration of justice, and should not be permitted.[3] It cannot be said, however, that the same reason applies to news reports of such proceedings, and only when publication is of benefit to the public is it protected.[4] To the extent, therefore, that the impartial administration of justice is of vital interest to the public, and publicity is security for

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[13]Smith *v.* Becker (1910) 62 Kan. 541; Davis *v.* Laning (1892) 85 Tex. 39; *cf.* Frazer *v.* Fulcher (1848) 17 Ohio 260. It has been held, moreover, that the contingency of death without children, upon which a gift over was limited, is not satisfied by the civil death of the primary devisee. Avery *v.* Everett (1888) 110 N. Y. 317.

[14]See Trust Co. of America *v.* State Safe Deposit Co. (1905) 109 App. Div. 665; New *v.* Smith, *supra.*

[15]See Stephani *v.* Lent (N. Y. 1900) 30 Misc. 346.

[16]See 5 Columbia Law Rev. 468, 469; Westbrook *v.* State (1909) 133 Ga. 578, 585; St. Louis, etc. Ry. *v.* Hydrick (Ark. 1913) 160 S. W. 196.

[1]MacDougall *v.* Knight & Son (1886) 17 Q. B. Div. 636; see Stockdale *v.* Hansard (1837) 9 A. & E. 1, 212.

[2]Rex *v.* Wright (1799) 8 D. & E. 293; 1 Cooley, Torts (3rd ed.) 451, *et seq.*

[3]Odgers, Slander & Libel (5th ed.) 233.

[4]See Metcalf *v.* Times Publishing Co. (1898) 20 R. I. 674.